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 Plaintiffs Pro Se

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UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF OREGON
 Eugene Division

PAUL KWAKE, an individual,)
DANIEL CAMPBELL, an individual,)
DOROTHY HAWLEY, an individual,)
 and)
GARY ROMINE, an individual)

Plaintiffs,)

-v-)

FARIBORZ PAKSERESHT, in his)
 official capacity as Director of Human)
 Services, State of Oregon; and)
ASHLEY CARSON-COTTINGHAM, in)
 her official capacity as Director of)
 Office of Aging and People with)
 Disabilities, a division within the state)
 Department of)
 Human Services, State of Oregon; and)
JODY N. CLINE, in her capacity as)
 Director of Senior and Disability)
 Services, a division within the Lane)
 Council of Governments,)

Defendants.)

Case No. 6:18-cv-603-JR

**RESPONSE TO DEFENDANT
 JODY N. CLINE'S
 MOTION TO DISMISS
 AMENDED COMPLAINT**

1. Notice pleading, liberally construed, is all that is required to sustain sufficiency of claim. *Donson Stores, Inc. v. American Bakeries Co.*, S.D.N.Y.1973, 58 F.R.D. 485. Federal Civil Procedure 630. When considering a motion directed to the face of

pleading, the court must construe allegations in manner most favorable to pleader, and, if language is at all ambiguous, it also should be construed most generously in favor of pleader. *U. S. Plywood Corp. v. Hudson Lumber Co.*, S.D.N.Y.1955, 17 F.R.D. 258. Federal Civil Procedure 654.1

The allegations within a pro se complaint, however in-artfully pleaded, are held to less stringent standards than formal pleadings drafted by lawyers. *Magnuson v. Cassarella*, N.D.Ill.1992, 812 F.Supp. 824. Federal Civil Procedure 657.5(1)

A pro se complaint is to be liberally read when it implicates vindication of civil rights or civil liberty. *Cruz v. Sielaff*, S.D.N.Y.1991, 767 F.Supp. 547. Civil Rights 1394

2. Plaintiffs have filed an amended complaint seeking declaratory judgment against defendant Jody N. Cline ("Cline").

3. A declaratory judgment is a "statutory method" that allows "a party to receive a declaration of its rights when there is a justiciable controversy," even when the party does not have right to any further relief. *Beldt v. Leise*, 185 Or App 572, 576, 60 P3d 1119 (2003). Cline has not presented any argument in her motion to dismiss that the complaint does not present a justiciable controversy.

4. Oregon, like most states, has adopted the Uniform Declaratory Judgments Act ("the Act"). See ORS 28.010–28.160. The Act is to be "liberally construed and administered." ORS 28.120. The purpose of the Uniform Declaratory Judgments Act is "to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations." ORS 28.120. "No action or proceeding shall be open to objection on the ground that a declaratory judgment is prayed for." ORS 28.010.

5. ORS 28.020 provides, in part: Any person . . . whose rights, status or other legal relations are affected by a constitution, statute, municipal charter, [or] ordinance . . .

may have determined any question of construction or validity arising under any such . . . constitution, statute, municipal charter, ordinance . . . or franchise and obtain a declaration of rights, status or other legal relations thereunder.

6. The Amended Complaint also seeks injunctive relief specifically against Jody. N. Cline in her official capacity as Director of Senior and Disability Services, a division within the Lane Council of Governments by "ordering LCOG to remove Marcy Yarbrough and Jordan Crowder from any further role involving any residents of Paul Kwake's adult foster care homes."

7. Jody N. Cline alleges that Paul Kwake is not entitled to the protections of the statutes that the complaint and injunction asserts was violated by the defendants. Paul Kwake is the representative payee for the other plaintiffs. This is synonymous as him being the "fiduciary" under FRCP 17(c) that states whenever an incompetent person has a representative, such as a general guardian, or other like *fiduciary*, the representative may sue or defend on behalf of the incompetent person.

Paul Kwake can assert the violations he claims for the other plaintiffs under the statutes that the other plaintiffs are protected under. Paul Kwake has not asserted that he, in his individual capacity, is a person that is qualified/entitled to such protections.

Dated 31 May 2018



Paul Kwake, Plaintiff Pro Se

CERTIFICATE OF SERVICE

I hereby certify that on 06-01-2018, I made service of the following document:

RESPONSE TO DEFENDANT JODY N. CLINES MOTION TO DISMISS
AMENDED COMPLAINT

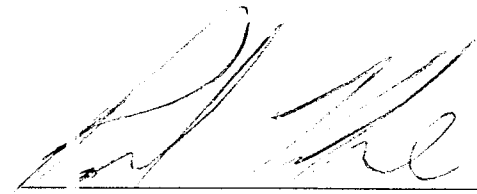
By placing a copy in a first class postage paid envelope in Eugene, OR for delivery

By U.S. Mail to the address set forth below:

Andrea D. Coit

Council for: Jody N. Cline

Hutchinson, Cox
P.O Box 10886
940 Willamette Street, Suite 400
Eugene, OR 97440



Signature

Pau Kwake
1865 17th Street #C
Springfield, OR 97477

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By U.S. Mail to the address set forth below:

Christina Beatty Walters

Council for: Fariborz Pakseresht

Department of Justice
100 SW Market Street
Portland, OR 97201



Signature

Paul Kwake
1805 17th Street #C
Springfield, OR 97477

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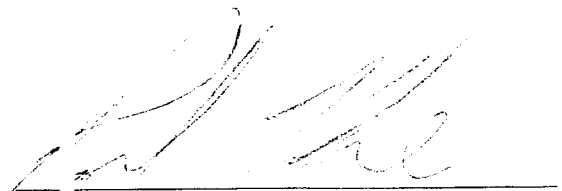
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Eugene, OR 97440

A handwritten signature in black ink, appearing to read 'Pau Kwake', written over a horizontal line.

Signature

Pau Kwake
186 S 17th Street #C
Springfield, OR 97477